

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT L. SANFORD,  
Plaintiff,

v.

EATON, *et al.*,  
Defendants.

No. 1:20-cv-00792-NONE-BAM (PC)

ORDER ADOPTING IN PART FINDINGS  
AND RECOMMENDATIONS

(Doc. 21)

Plaintiff Robert L. Sanford filed this lawsuit against prison officials, alleging that they were deliberately indifferent to the serious risk of harm the coronavirus posed to him. The assigned magistrate judge recommended dismissing Plaintiff's second amended complaint (Doc. 19, "SAC") for failure to state a federal-law claim and declining jurisdiction over any state-law claims. (Doc. 21.) Plaintiff timely filed objections on September 9, 2021. (Doc. 24.)

The SAC brings a conditions-of-confinement claim against Warden Cates and Chief Deputy Warden Schuyler of California Correctional Institution for their response to the COVID-19 pandemic. The findings and recommendations found that although COVID-19 is an objectively substantial risk of serious harm, Plaintiff failed to allege Defendants were deliberately indifferent to that risk because they were considering different approaches to deal with the pandemic and had implemented some measures. The findings and recommendations further found that Plaintiff failed to allege personal involvement by Defendants. (Doc. 21.) Plaintiff

1 objects on both grounds. (Doc. 24.)

2 **A. Personal Involvement**

3 Plaintiff objects to the magistrate judge's conclusion that Plaintiff failed to state an Eighth  
4 Amendment claim against Defendants.

5 With respect to Defendant Schuyler, Plaintiff alleges he encountered Defendant Schuyler  
6 on July 1 or 2, 2020 while Defendant Schuyler was touring Clark Hall Low Dorm. (SAC ¶¶ 24–  
7 26.) That dorm was experiencing an outbreak, had crowded conditions, and was extremely  
8 unsanitary. (*Id.* ¶¶ 22, 24–26.) Plaintiff asked Defendant Schuyler, “Why aren’t you and the  
9 administration providing partitions for the dorms to prevent the spread of Covid-19?” Defendant  
10 Schuyler responded that he and the warden “were working on alternatives[.]” (*Id.* ¶ 24.) Plaintiff  
11 alleges that the alternatives they decided on were to make mass moves to other unsanitary areas  
12 by July 10. (*Id.* ¶ 30.) Thus, the SAC adequately alleges that Schuyler was personally involved  
13 in the failure to provide partitions between beds and about the crowded and unsanitary conditions  
14 of Clark Hall Low Dorm. The SAC does not adequately allege, however, that Schuyler was  
15 aware of and failed to respond to any other infirmities in the prison’s response to COVID-19. For  
16 instance, Plaintiff does not allege that Defendant Schuyler had anything to do with the decision  
17 for how long to quarantine new arrivals or that he was aware of prison guards’ failure to wear  
18 masks.

19 With respect to Defendant Cates, Plaintiff repeatedly concludes that actions are  
20 attributable to Cates without factual support for his conclusions. For examples, he alleges that  
21 Cates sent Schuyler to Clark Hall Low Dorm to investigate the situation. Though it was  
22 “apparent” that Schulyer was there at Cates’ direction, this is simply Plaintiff’s speculation and is  
23 unsupported by factual allegations.

24 The SAC alleges also Plaintiff asked a correctional officer about his housing situation and  
25 his request not to share facilities with inmates who refused to take a COVID-19 test. The officer  
26 informed Plaintiff that it “was no longer his call” as to inmate housing at the facility and “directed  
27 [Plaintiff] to contact the CCI Administrators, such as the Warden or one of the Counselors” to  
28 discuss his concerns. (SAC ¶ 12.) Once again, the fact that Plaintiff concludes that the CO meant

1 that Cates was personally deciding housing decisions is not support by any factual allegations.  
2 Plaintiff's mere conclusions are insufficient to state a claim.

3 Plaintiff sent to Cates's office a Form 22 with his request to remain in his current cell.  
4 (*Id.* ¶ 13.) Plaintiff did not receive a reply from the warden's office but was told by staff that he  
5 had used the wrong form. (*Id.*) This does not demonstrate that Cates knew about Plaintiff's  
6 plight. Rather, there is no factual support that the ever received it, because it appears that it was  
7 screened out before reaching him.

8 On the other hand, Plaintiff alleges he spoke with a correctional officer about being  
9 moved before the expiration of the 14-day quarantine period. Plaintiff was told "they have been  
10 authorized by the warden to move all the positive infected Covid-19 inmates into Van Weston  
11 Upper[.]" (*Id.* ¶ 15.) This allegation is minimally sufficient to demonstrate personal involvement  
12 by Cates. In all other respects, Plaintiff's allegations about Cates's involvement are conclusory or  
13 otherwise inadequate.

#### 14 **B. Deliberate Indifference**

15 The findings and recommendations correctly note that if Defendants responded reasonably  
16 to the pandemic, then they were not deliberately indifferent. *See Farmer v. Brennan*, 511 U.S.  
17 825, 844 (1994) (prison officials not deliberately indifferent "if they responded reasonably to  
18 the risk, even if the harm ultimately was not averted"); *Wilk v. Neven*, 956 F.3d 1143, 1147 (9th  
19 Cir. 2020) ("Specifically, a prison official violates an inmate's Eighth Amendment right only if  
20 that official is deliberately indifferent—in other words, if the official is subjectively aware of a  
21 substantial risk of serious harm to an inmate and disregards that risk by failing to respond  
22 reasonably."). Conversely, an official who is subjectively aware of a substantial risk of serious  
23 harm and fails to respond reasonably is subject to Eighth Amendment liability. *Id.*

24 Plaintiff objects to the magistrate judge's recommendation to dismiss Plaintiff's Eighth  
25 Amendment claim by arguing that Defendants' response was unreasonable. The findings and  
26 recommendations concluded that Defendants were aware of the risk and were attempting different  
27 approaches. The findings and recommendations point out that Plaintiff alleges he approached  
28 Defendant Schuyler and asked why there were no partitions between the beds and Defendant

1 Schuyler responded by saying that he and the warden “were working on alternatives[.]” (SAC  
2 ¶ 24.) Plaintiff also alleges that nurses conducted temperature checks, that he was offered tests  
3 for COVID-19, that he was quarantined after testing positive, and that the prison was taking  
4 various measures when considering housing.

5 Courts reviewing deliberate-indifference claims regarding COVID-19 have considered  
6 CDC guidance documents. “[W]hile guidance from outside organizations is not determinative of  
7 constitutional requirements, ‘known noncompliance with generally accepted guidelines for  
8 inmate health strongly indicates deliberate indifference to a substantial risk of serious harm. Such  
9 guidelines may include CDC guidance.’” *Maney v. Brown*, No. 6:20-CV-00570-SB, 2021 WL  
10 354384 (D. Or. Feb. 2, 2021) (quoting *Shank v. Corizon Inc.*, No. CV 19-04638-PHX-ROS  
11 (JFM), 2020 WL 5628014, at \*4 (D. Ariz. Sept. 2, 2020)) (some internal quotation marks  
12 omitted). *See also Criswell v. Boudreaux*, No. 1:20-cv-01048-DAD-SAB, 2020 WL 5235675, \*5  
13 n.3 (E.D. Cal. Sept. 2, 2020) (noting district courts have held that “the CDC Guidelines represent  
14 the floor, not the ceiling, of an adequate response to COVID-19 at the Jail.” (quoting *Ahlman v.*  
15 *Barnes*, 445 F. Supp. 3d 671, 691 (C.D. Cal. 2020))); *see also* 4 Michael B. Mushlin, *Rights of*  
16 *Prisoners* § 19:14 (5th ed. Oct 2021 update) (“Many courts have used the CDC guidelines as the  
17 benchmark” for whether a “response is so insufficient that it constitutes deliberate[]  
18 indifference”). Additionally, in the context of the Fifth Amendment, the Ninth Circuit reviewed a  
19 preliminary injunction in *Roman v. Wolf*, 977 F.3d 935 (9th Cir. 2020) that required an  
20 immigration detention centers to comply with CDC guidance. There, the Ninth Circuit had  
21 previously modified the district court’s preliminary injunction to require only “substantial  
22 compliance with the guidelines issued by the CDC for correctional and detention facilities to  
23 follow in managing COVID-19” instead of complete compliance. *Id.* at 939. In its published  
24 opinion on the matter, the Ninth Circuit noted that CDC “guidelines do not provide a workable  
25 standard for a preliminary injunction” due to their length and lack of specificity, thus making  
26 them “a poor guidepost for mandatory injunctive relief.” *Id.* at 946 (citing Fed. R. Civ. P.  
27 65(d)(1)(B), (C)). Thus, noncompliance with CDC guidelines can, in certain circumstances, state  
28 a constitutional claim for damages. The Court departs from the findings and recommendations to

1 the extent the findings and recommendations suggested that CDC guidelines are irrelevant to  
2 determining subjective deliberate indifference. However, the Court reiterates that to establish that  
3 prison officials acted unreasonably, Plaintiff must rely on more than their non-compliance with  
4 either CDC or CDCR policies; he must also establish that their response was unconstitutional.  
5 *See Case v. Kitsap Cty. Sheriff's Dep't*, 249 F.3d 921, 930 (9th Cir. 2001) (“There is no § 1983  
6 liability for violating prison policy. Plaintiff must prove that the official violated his  
7 constitutional right.” (quoting *Gardner v. Howard*, 109 F.3d 427, 430 (8th Cir. 1997))).

8 Though Plaintiff attributes every perceived failure to address the COVID-19 pandemic to  
9 Cates and Schulyer, he fails to allege facts to support these conclusions. Accordingly, the Court  
10 agrees that Plaintiff has failed to state a claim for violations of the Eighth Amendment.

### 11 C. Conclusion

12 The court adopts the remaining aspects of the magistrate judge’s reasoning. However, the  
13 Court notes that it has provided Plaintiff with standards he was not previously given, particularly  
14 with respect to CDC guidance. Thus, the Court will grant Plaintiff one more opportunity to  
15 amend his complaint. Accordingly,

16 1. The court adopts in part the findings and recommendations issued on July 16,  
17 2021, (Doc. 21);

18 2. Plaintiff’s second amended complaint is dismissed with leave to amend within  
19 thirty days; and

20 3. This matter is referred back to the magistrate judge for further proceedings.

21  
22 IT IS SO ORDERED.

23 Dated: January 19, 2022

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UNITED STATES DISTRICT JUDGE